

August 5, 2008

File #: 1700-019-E06-6-L-51

Mr. Lorne Greenwood
9-130 Rubert Street
Milton, Ontario
L9T 6E3

Dear Mr. Greenwood:

COMMISSIONER'S CAUTION

I am writing in my capacity as legal counsel to the Commissioner of Canada Elections, who is responsible for compliance with and enforcement of the *Canada Elections Act* (the *Act*). One of my functions is to provide recommendations to the Commissioner concerning enforcement action upon receiving information that indicates a possible failure to comply with the *Act*.

I am writing in respect to an amount reported as a transfer made by the Halton Conservative Association to the campaign of Garth Turner, a candidate in the electoral district of Halton during the 2006 federal general election.

The Political Financing and Audit Section of Elections Canada has referred to our Office information indicating that there appears to be a failure to comply with subsection 404(2) of the *Act*. This appears from information indicating that the Turner campaign received a monetary transfer of \$10,000 from the Halton Conservative Association on December 1, 2005, before the nominated candidate was confirmed by the returning officer as a candidate on December 5, 2005. You would have accepted this amount in your capacity as Official Agent of Garth Turner.

Please be advised that this transfer is considered an ineligible contribution, as it does not comply with the transfer requirements of paragraph 404.2(2.2)(b) of the *Act*:

404.2 (2.2) A transfer of funds, other than trust funds, is permitted and is not a contribution for purposes of this Act if it is

(b) from a registered association to a candidate endorsed by the party, with which the association is affiliated.

At the time of the transfer, Garth Turner was not a candidate. The *Act* defines a "candidate" as a person whose nomination as a candidate at an election has been confirmed by the returning officer pursuant to subsection 71(1) of the *Act*. Therefore, if a registered association provides a monetary transfer to a person before they are confirmed as a candidate

having the endorsement of the party pursuant to paragraph 67(4)(c) of the Act, such a transfer does not qualify under paragraph 404.2(2.2) and the registered association becomes an ineligible contributor pursuant to s. 404(1). Subsection 404(1) states:

404. (1) No person or entity other than an individual who is a citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act shall make a contribution to a registered party, a registered association, a candidate, a leadership contestant or a nomination contestant.

Subsection 404(2) of the Act requires the return of a contribution received from an ineligible contributor. The information provided to our office contains no indication that these funds were returned to the electoral district association. This subsection reads as follows:

(2) If a registered party, a registered association, a candidate, a leadership contestant or a nomination contestant receives a contribution from an ineligible contributor, the chief agent of the registered party, the financial agent of the registered association, the official agent of the candidate or the financial agent of the leadership contestant or nomination contestant, as the case may be, shall, within 30 days after becoming aware of the ineligibility, return the contribution unused to the contributor or, if that is not possible, pay the amount of it or, in the case of a non-monetary contribution, an amount of money equal to its commercial value, to the Chief Electoral Officer who shall forward that amount to the Receiver General.

Under paragraph 497(1)(i.1) of the Act, it is an offence to contravene subsection 404(2) of the Act by failing to return an ineligible contribution within 30 days of becoming aware that it is ineligible. Subsection 500(1) of the Act states that every person who is guilty of an offence under subsection 497(1) is liable on summary conviction to a fine of not more than \$1,000 or to imprisonment for a term of not more than three months, or to both.

The amount in question in this particular transaction, \$10,000, is significant and was received prior to the confirmation of the candidate. A transaction of this nature, outside the regime permitting a transfer from a registered association or a registered party to an endorsed and confirmed candidate, may enable a campaign to spend money that would not otherwise be available to it, and may leave the impression of gaining an advantage over a campaign that accepts no transfers until after the candidate's nomination has been confirmed.

For further reference, please review the document entitled "Important Reminders for Candidates and Their Official Agents" posted on the Elections Canada web site, a copy of which is attached.

Under section 504 of the Act, a registered association or a registered party is deemed to be a person and the acts or omissions of specified officers or agents are imputed to the relevant registered association or party. The making of a contribution by an entity not eligible to do so is also an offence. A copy of this letter is therefore being sent to the electoral district association.

In the particular circumstances of this case and in the public interest, the Commissioner has decided to issue you a formal caution. You are now aware that the Canada Elections Act requires that the nomination of an endorsed candidate be confirmed before a transfer from an electoral district association is considered to be validly made.

If you have any concerns about the accuracy of the information detailed in this letter, please contact our office by telephone at 1-800-267-7360 or myself by e-mail at jack.hansen@elections.ca.

Please provide this office with acknowledgement of receipt of this letter by signing, dating and returning the enclosed copy of the letter in the self addressed envelope. Subject to receiving your acknowledgment and the information currently available, the Commissioner has decided that it is in the public interest to not proceed further with this matter.

For purposes of review, I have enclosed documentation that details the Act's controls on transfers between affiliated political entities.

Yours truly,



Jack Hansen
Legal Counsel

I acknowledge receipt of this letter.

Official Agent for Garth Turner

Date

c.c. Garth Turner
William Stewart, CEO, Halton Conservative Association

Encl: Important Reminders for Candidates and Their Official Agents
Information Sheet 5 – Transfer Between Affiliated Political Entities